



**FOLEY  
HOAG** LLP  
ATTORNEYS AT LAW

Mary Beth Gentleman  
Boston Office  
617-832-1199  
mgentleman@foleyhoag.com

October 4, 2004

**Via E-mail**  
**By Hand**

Ms. Mary L. Cottrell  
Secretary  
Commonwealth of Massachusetts  
Department of Telecommunications & Energy  
One South Station  
Boston, MA 02110

Re: Petition of Commonwealth Electric Company - D.T.E. 04-78

Dear Ms. Cottrell:

On behalf of Dartmouth Power Associates Limited Partnership, I enclose for filing in the above-referenced docket one original and five (5) copies of the Petition for Leave to Intervene of Dartmouth Power Associates Limited Partnership. A copy will also be filed electronically.

Kindly date stamp the enclosed copy of this letter, and return same to our messenger.

Thank you for your attention to this matter.

Sincerely yours,

Mary Beth Gentleman

MBG:jrd  
Enclosure

cc: Joan Foster Evans, Hearing Officer  
Colleen McConnell, Esquire  
Robert N. Werlin, Esquire  
John K. Habib, Esquire  
Robert Powell, Vice President and Counsel

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**D.T.E. 04-78**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing documents upon all persons below in accordance with the requirements of 220 C.M.R. § 1.03(1) and the procedural rules in this docket.

Dated at Boston this 4<sup>th</sup> day of October, 2004.



Mary Beth Gentleman  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, MA 02210  
(617) 832-1199

Mary L. Cottrell, Secretary  
Department of Telecommunications and  
Energy  
One South Station  
Boston, MA 02210

Joan Foster Evans, Hearing Officer  
Department of Telecommunications and  
Energy  
One South Station  
Boston, MA 02110

Robert N. Werlin, Esq.  
John K. Habib, Esq.  
Keegan, Werlin & Pabian, LLP  
265 Franklin Street  
Boston, MA 02110

Colleen McConnell, Esquire  
Assistant Attorney General  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Commonwealth Electric Company d/b/a ) NSTAR Electric for Approvals Relating to ) Termination of Its Obligations to Purchase ) Electricity Under a Power Purchase Agreement with ) Dartmouth Power Associates Limited Partnership )	D.T.E. 04-78
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**PETITION FOR LEAVE TO INTERVENE OF**  
**DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP**

Dartmouth Power Associates Limited Partnership (“Dartmouth Power”) hereby submits to the Department of Telecommunications and Energy (the “DTE”) a petition for leave to intervene as a full party in the above-captioned proceeding (the “Petition”), pursuant to 220 C.M.R. 1.03(1). In support of its Petition, Dartmouth Power states as follows:

1. Dartmouth Power is a Massachusetts limited partnership having its principal place of business at 1 Energy Road, Dartmouth, MA 02747.
2. Dartmouth Power operates a 68 megawatt gas-fired generating facility in Dartmouth, Massachusetts (the “Facility”).
3. Dartmouth Power and Commonwealth Electric Company (“Commonwealth”) are parties to a Power Purchase Agreement, dated as of September 5, 1989 (and subsequently amended on August 3, 1990, June 23, 1994, April 25, 1995 and October 15, 2002) (together, the “Dartmouth Power PPA”), pursuant to which Dartmouth Power sells to Commonwealth, and Commonwealth purchases from Dartmouth Power, electric energy products produced by the Facility.

4. As a result of an auction by Boston Edison Company, Cambridge Electric Light Company and Commonwealth (d/b/a NSTAR Electric) of their PPA entitlements, including the Dartmouth Power PPA, the Dartmouth Power PPA will be assigned to an affiliate of Dartmouth Power, Dartmouth PPA Holdings LLC (“Dartmouth Holdings”), a Delaware limited liability company having its principal place of business at 2929 Allen Parkway, Suite 2200, Houston, Texas. The assignment will take place under the terms and conditions of a Purchase and Sale Agreement, which Dartmouth Holdings and Commonwealth executed on August 18, 2004 (the “Purchase and Sale Agreement”).

5. Under the Purchase and Sale Agreement, the Dartmouth Power PPA will be assigned to Dartmouth Holdings on the date on which certain conditions specified in the Purchase and Sale Agreement have been met. *See* Purchase and Sale Agreement, Article 4. In consideration for the assignment of Commonwealth’s obligations under the Dartmouth Power PPA, Commonwealth will pay Dartmouth Holdings the Purchase Price as defined in Article 3.1 of the Purchase and Sale Agreement.

6. On August 27, 2004, Commonwealth petitioned the DTE pursuant to G.L. c. 164, § § 1A, 1G, 76, 94 and 94A for approval of the Purchase and Sale Agreement and of the ratemaking treatment relating thereto (the “NSTAR Petition”).

7. Pursuant to G.L. c. 30A, § 10, the DTE may “allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose as the [DTE] may order.” *See also* 220 CMR 1.03(1)(b).

8. Dartmouth Power seeks to intervene in this proceeding because the DTE's determination and findings in this proceeding will have a direct bearing on Dartmouth Power. Dartmouth Power is a party to Dartmouth Power PPA which is being assigned under the Purchase and Sale Agreement. Implementation of the transaction contemplated under the Purchase and Sale Agreement is contingent upon receipt of regulatory approvals by various governmental agencies, including the DTE. *See* Purchase and Sale Agreement, Article 4.2 (a) and (b) and 4.3 (a) and (b). Performance by both Commonwealth and Dartmouth Holdings under the Purchase and Sale Agreement is contingent upon the issuance of an order by the DTE, in a form reasonably satisfactory to Commonwealth and Dartmouth Holdings, approving the terms of the Purchase and Sale Agreement. Purchase and Sale Agreement, Article 4.2(a) and 4.3(a). Without Department approval of the Purchase and Sale Agreement, the Dartmouth Power PPA will not be assigned to Dartmouth Power's affiliate as contemplated in the Purchase and Sale Agreement. Dartmouth Power is thus substantially and specifically affected by the outcome of this proceeding.

9. No other party can adequately represent Dartmouth Power's interest, as Dartmouth Power's legal rights and duties are affected. Moreover, no other party can represent Dartmouth Power's interest as a party to the Dartmouth Power PPA.

10. DTE precedent supports the intervention of contracting parties in proceedings affecting their contracts or agreements. *See e.g., Boston Edison Co./Commonwealth Electric Co.*, D.T.E. 98-119-126 (1998), at 1 (permitting the Entergy Nuclear Generation Company to intervene in the DTE's review of a Power Purchase Agreement between Boston Edison Company and Entergy); *Canal Electric Co.*, D.T.E. 02-34 (2002), at 1 (permitting FPL Energy Seabrook to intervene in the DTE's review of a purchase and sale agreement between FPL

Energy Seabrook and Canal); *Commonwealth Electric Co./Cambridge Electric Light Company*, D.T.E. 04-60 (2004), at 1; *Boston Edison Co. and Commonwealth Electric Co.*, D.T.E. 04-61, Hearing Officer Ruling on Petition to Intervene and Amended Petition for Limited Participant Status, September 30, 2004, at 1.

11. Dartmouth Power seeks all the rights of a full party, including the right to file discovery, question witnesses, present testimony and submit briefs.

12. The Petitioner, Commonwealth, has no objection to Dartmouth Power obtaining full intervenor status in this proceeding.

13. Dartmouth Power requests that all notices, testimony, pleadings and correspondence pertaining to this proceeding be directed to:

Mary Beth Gentleman  
Andrew D. Fagenholz  
Foley Hoag LLP  
World Trade Center West  
155 Seaport Boulevard  
Boston, MA 02210

WHEREFORE, Dartmouth Power respectfully requests that the DTE grant its Petition for Leave to Intervene in this proceeding.

Respectfully submitted,

**DARTMOUTH POWER ASSOCIATES  
LIMITED PARTNERSHIP**

By its attorneys,

A handwritten signature in cursive script, appearing to read "Mary Beth Gentleman", is written over a horizontal line.

Mary Beth Gentleman  
Andrew D. Fagenholz  
Foley Hoag LLP  
World Trade Center West  
155 Seaport Boulevard  
Boston, MA 02210  
(617) 832-1000  
mgentleman@foleyhoag.com

Dated: October 4, 2004